IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PEITION NO.2597 OF 2004

Chitra Haldipur. ...Petitioner.

Versus

Shahid Bhagat Singh CHS Ltd. & Ors. ...Respondents.

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Mr.Rajiv Wagh with Ms.Nivit Srivastava for the Petitioner.
Mr. U. P. Bobade with Mr. K. P. Ravi for Respondent No.1.
Mr. G. Pandit for Respondent No.6.

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CORAM : DR. D.Y. CHANDRACHUD, J.

October 7, 2006.

ORAL JUDGMENT:

The dispute in the present case relates to the rights in respect of a plot of land bearing Plot No.119, Shahid Bhagat Singh Co-operative Housing Society Ltd., Guru Nanak Nagar, Andheri-Kurla Road, Mumbai-400 059. The First Respondent is a Housing Society registered under the Bombay Co-operative Societies' Act, 1925 and is a plot owners' Society. The original member to whom Plot No.119 was allotted was one Shri Anup Singh Grover. The Society was formed and registered initially in the year 1958 and issued share

certificates to its members in 1959. The Society purchased land at J.B. Nagar, Andheri (East) and constructed 96 blocks, of which Block bearing No.119 was alloted to the aforesaid member in 1961. The Society constructed the Ground Floor upon which members were permitted to construct an additional floor. In the year 1965, Shri Grover added the first floor to the existing ground floor structure. The ground floor structure has been designated by the Society as Block No.119, whereas the first floor is described as Block No.119A. Shri Grover had submitted three nomination forms to the Society; the first in the year 1968, the second in the year 1985 and the third a little prior to his death in 1997. The first two nomination forms were in favour of the Second Respondent who is alleged to be the lawfully wedded wife of the original member. The third nomination form was alleged to have been filed by the member on 26th March 1996 by which the Petitioner herein, was nominated in respect of Flat No.119 and 119A. It is, however, common ground that the nomination form was submitted to the Society on 13th January 1997 a little prior to the death of the member. The original member expired on 26th January

1997.

2. Disputes then arose between the Petitioner and the Second Respondent. The Petitioner claims to be the adopted daughter of the deceased member, while the original Second Respondent stakes her claim as a lawfully wedded wife. From the material on record, it has emerged that the Petitioner herein submitted under cover of a letter dated 5th August 1997 several documents to the Co-operative Society agreeing that the membership should be transferred in favour of the Second Respondent. Among the documents which were executed by the Petitioner were (i) An affidavit dated 9th May 1997 wherein the Petitioner admitted that the Second Respondent was the lawfully wedded wife of Shri Grover whereas the Petitioner herself was a daughter of one Mrs. Madhuri Gharat and that she was not either the adopted daughter of the member or his legal heir; (ii) A declaration-cum-Deed of Indemnity dated 5th August 1997 submitted by the Petitioner to the Co-operative Society in which she referred to an agreement executed between herself and the Second Respondent on 9th May 1997; (iii) An agreement dated 9th May 1997 by which the

Petitioner admitted that the Second Respondent was the lawfully wedded wife of the original member; that a lady by the name of Hemal was staying with the original member and that the Petitioner was born and brought up as a non-Sikh. In the agreement, the Petitioner agreed that it is only the Second Respondent who was the legal heir entitled to succeed to the estate of the deceased member and that there was no adoption of the Petitioner by the deceased member and his wife.

3. Acting on the basis of the documents executed by the Petitioner, the society transferred the membership of the erstwhile member in the name of the Second Respondent. The Second Respondent expired during the pendency of the proceedings. The legal heirs of the Second Respondent have not been brought on the record. The Sixth Respondent claims an interest in the estate of the Second Respondent under a Deed of Gift. It would appear from the affidavit that was executed by the Petitioner on 9th May 1997, the declaration-cum-deed of indemnity dated 5th August 1997 and the

agreement dated 9th May 1997 that it was agreed between the Petitioner and Second Respondent that the rights in respect of the first floor comprising of Block No.119A would be transferred in the name of the Petitioner, whereas the rights in respect of the ground floor comprising of Block No.119 would be transferred to the Second Respondent. However, on behalf of the Petitioner, it has been submitted that the documents though executed by the Petitioner, were executed at a time when the Petitioner was single and that though she was aged 30, she had lost both her parents within a short span of time. It may be noted that at the present stage, the Sixth Respondent has stated before the Court that he is willing to abide by the original understanding with the Petitioner which was to the effect that the Petitioner would be entitled to the first floor (Block 119A). Counsel appearing on behalf of the Petitioner has, however, stated before the Court that the Petitioner disputes the understanding.

4. On this state of the record, the Petitioner moved the Deputy Registrar of Co-operative Societies, under Section 23(2) of the

Maharashtra Co-operative Societies' Act, 1960, seeking membership based on the letter of nomination dated 25th March 1996. The application was dismissed against which a revision was preferred to the Divisional Joint Registrar. The revisional authority has confirmed the order of the Deputy Registrar.

5. The provisions of law governing the transfer of the share of a deceased member are contained in Section 30 of the Maharashtra Co-operative Societies' Act, 1960, which provides as follows:

> "30. Transfer of interest on death of member.- (1) On the death of a member of a society, the society shall transfer the share or interest of the deceased member to a person or persons nominated in accordance with the rules or, if no person has been so nominated, to such person as may appear to the committee to be the heir or legal representative of the deceased member:
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> Provided that, such nominee, heir or legal representative, as the case may be, is duly admitted as a member of the Society;
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> Provided further that, nothing in this sub-section or in Section 22, shall prevent a minor or person of unsound mind from acquiring by inheritance or otherwise, any share or interest of a deceased member in a society.

> -(2) Notwithstanding anything contained in sub-section (1), any such nominee, heir or legal representative, as the case may be, may require the society to pay to him the value of the share or interest of the deceased member, ascertained in accordance with the rules.
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> -(3) A society may pay all other moneys due to the deceased member from the society to such nominee, heir or legal representative, as the case may be.
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> -(4) All transfers and payments duly made by a society in accordance with the provisions of this Section, shall be valid and effectual against any demand made upon the society by any other person."

There can be no dispute about the principle of law that on the death of the member of the society, the society is required to transfer the share or interest of the deceased member to the person who is nominated in accordance with the rules. If no person is nominated the Society has to transfer the share or interest to an heir or to the legal representative of the deceased member. Rule 25 of the Maharashtra Co-operative Societies' Rules, 1961, lays down the procedure for making a nomination and it is to the following effect:

> “25. Nomination of persons.- (1) For the purpose of transfer of his share or interest under sub-section (1) of Section 30, a member of a society may, by a document signed by him or by making a statement in any book kept for the purpose by the society nominate any person or persons. Where the nomination is made by a document, such document shall be deposited with the society during the member's life time and where the nomination is made by a statement, such statement shall be signed by the member and attested by one witness.
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> -(2) The nomination made under sub-rule (1) may be revoked or varied by any other nomination made in accordance with that sub-rule.
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> -(3)(i) Where a member of a society has not made any nomination, the society shall on the member's death, by a public notice exhibited at the office of the society, invite claims or objections for the proposed transfer of the share or interest of the deceased within the time specified in the notice.
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> -(ii) After taking into consideration the claim or objections received in reply to the notice or otherwise, and after making such inquiries as the committee considers proper in the circumstances prevailing, the committee shall decide as to the person who in its opinion is the heir or the legal representative of the deceased member and proceed to take action under Section 30.”

These provisions have been interpreted by a Division Bench of this Court in **Om Siddharaj the Co-operative Housing Society Ltd. vs.**

The State of Maharashtra.[1] The Division Bench held as follows:

> "On a plain reading of section 30, it is clear that on death of a member of the society, it is incumbent on the society to transfer the share or interest of the deceased member to "a person or persons nominated in accordance with the Rules". It is only in the event of there being no nomination of any person, the society can transfer the share or interest of the deceased member to "such person as may appear to the committee to be the heir or legal representative" of the deceased member. The language of the section is clear and unambiguous. If a person is nominated in accordance with the Rules, the society is obliged to transfer the "share and interest of the deceased member" to such nominee. It is no part of the business of the society in that case to find out the relation of the nominee with the deceased member or to ascertain and find out the heir or legal representatives of the deceased member. It is only if there is no nomination in favour of any person, that the share and interest of the deceased member has to be transferred to such person as may appear to the committee of the society to be the heir or legal representative of the deceased member. The contention of the learned Counsel for the appellant that the nomination can be only in favour of an heir or legal representative is not tenable on the face of the clear language of section 30 of the Act."

It is a settled principle of law that a nomination to a share or interest in a Co-operative Society is only meant to provide an arrangement between the death of the original member and the full administration

1 1998(4) Bom. C.R. 506

of the estate. Mere nomination does not either vest title or disrupt the title of persons who are interested in the estate of the deceased under the ordinary law of succession. Ordinarily, but for the documents that have been executed by the Petitioner, there could be no gainsaying the fact that the Society was bound to comply with the nomination that was made by the member in favour of the Petitioner assuming that the nomination was a genuine document. The Society has drawn the attention of the Court in its affidavit in reply to certain circumstances relating to the nomination namely, that while the nomination form was alleged to have been executed on 25th March 1996, it was actually lodged with the Society on 13th January 1997 and that the deceased member was sometime prior to his death, incapable of understanding fully the implications of his actions. It is not necessary to express any opinion thereon since this is not a suit for the administration of the estate of the deceased. Whether the deceased was of a sound or disposing mind does not fall for consideration in the present proceedings. The facts before the Court would, however, show that after the death of the original member,

there was a dispute between the Petitioner on the one hand, and the original Second Respondent who claimed to be the lawfully wedded wife of the deceased member. It is now undisputed that the Petitioner has executed certain documents, the purport of which was that the Petitioner acknowledged the right of the Second Respondent as the lawfully wedded wife of the deceased member to succeed to his estate. According to the Petitioner, the Petitioner was the niece of a lady by the name of Hemal who had resided together with the deceased for a long period of time and that the Petitioner herself was brought up by the deceased and the aforesaid Hemal as their adopted daughter. In the documents which the Petitioner executed, she recognised the right of the original Second Respondent to the membership of the Society. As already noted earlier, it appears that at some point of time, there was an understanding between the parties that the first floor comprising of Block No.119A would be given to the Petitioner. Before the Court it is the case of the Petitioner that when those documents were executed by the Petitioner, she was not in a sound state of mind. In the exercise of

the jurisdiction under Article 226 of the Constitution, it would neither be appropriate nor proper for the Court to go into such disputed questions of fact. It is for the Petitioner to adopt such proceedings in law either to seek the administration of estate of deceased or for a declaration to the effect that the documents that were executed by her be delivered up for cancellation. On the present state of the record, when the attention of the Court has been drawn to the fact that it was in view of the declaration made by the Petitioner on 5th August 1997 that it was agreed to transfer the membership of the original member to the Second Respondent, no interference under Article 226 of the Constitution is warranted. The Society has accepted the Petitioner as a nominal member in respect of the block comprising the first floor namely, Block No.119A. In the event that the Petitioner seeks to assert an exclusive right of her own to the entire property, it would be open to her to adopt such remedies as are available in law. Nothing in the present order shall come in the way of the final adjudication of the rights, if any, as are claimed by the parties to such a proceeding.

6. The petition is accordingly dismissed.

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